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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM - 1977

No. 77-1118

Richard Kananen Soc. Sec. #021-24-6052
Petitioner - Appellant

v

Secretary of H.E.W.
David Matthews
APPELLEE

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE EIGHTH CIRCUIT

R. A. Kananen,
Attorney pro-se

Rural Route 2
Browerville, Minnesota 56438

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The petitioner R. A. Kananen prays that a Writ of Certiorari issue to review the opinion and judgement of the United States Court of Appeals for the Eighth Circuit affirming a District Court. This judgement upheld the Secretary's decision to withhold $9,000.00 under Section 224 of the Social Security Act. There was no hearing on the merits. The petitioner maintains the sanction is based on clearly unconstitutional grounds and in fact constitutes gross and invidious discrimination.

OPINIONS BELOW

The original judgement in the United States District Court, St. Paul, Minn. it appears herein as Appendix A and was not reported.

OPINION OF THE EIGHTH CIRCUIT COURT OF APPEALS OF THE UNITED STATES

The opinion of the Eighth Circuit Court of Appeals herein as Appendix B. The United States Court of Appeals affirmed the District Court.

JURISDICTION

(i) The opinion of the United States Court of Appeals for the Eighth Circuit was initially entered May 25, 1977.
(ii) The Jurisdiction of this Court is invoked under 28 U.S.C. 1254 and 28 U.S.C. 2101.

QUESTIONS PRESENTED FOR REVIEW

1. Is the actions denying appellant a fair hearing under established procedure just?

Does the action of the District Court and of the Secretary in completely ignoring appellants Amended Complaint pursuant to Rule 15(a) under the Federal Rules of Civil Procedure, constitutional under the 5th and the 14th Amendments.

2. Is this judgement constitutional in light of the 5th and the 14th Amendment?

Under the facts is such a judgement for applying the so-called offset provision of Section 224 of the Social Security Act valid where there is two completely separate and distinct disabling injuries.

3. Is this judgement constitutional in light of the 5th and the 14th Amendments?

Is the actions of the Courts below and the Secretary in assessing overwhelming credance to evidence the appellant has shown to be tainted, and completely disregarding appellants evidence just.

2. Is this judgement constitutional in light of the 5th and the 14th Amendments?

The actions of the Secretary invoking the so-called offset provision in this case, when the monies involved in the Workmen's Compensation Case was supplied by a private insurance carrier.

CONSTITUTIONAL PROVISIONS AND COURT RULES INVOLVED

DUE PROCESS - AMENDMENT V

1. Article V of the Amendment of the Constitution of the United States provides:

". . . nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."

2. Article XIV of the Amendment of the Constitution of the United States provides:

". . . nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

3. Rule 15(a) of Civil Procedure provides:

". . . a party may amend his pleading once as a matter of course at any time before a responsive pleading is served."

STATEMENT OF THE CASE
ABBREVIATIONS

"T" shall designate transcript of Bureau of Hearings and Appeal H.E.W. herein.

"AAC" shall designate Appellant's Amended Complaint - District Court.

"AB" shall designate Appellant's brief for the Eighth Circuit.

There is no transcript from the Court's below since there never has been a hearing on the merits and all evidentual facts have been submitted by affidavit. The judgement upholding the Secretary's decision to withhold $9,000.00 under the so-called offset provision, Section 224 of the Social Security Act, is clearly a capricious and unconstitutional interpretation of that act and clearly is in vidious discrimination.

FACTS SURROUNDING WORKMEN'S COMPENSATION CASE

Petitioner sustained spinal injuries November 1966, and January 1967 which resulted in a findings and Award page 129 through 134 inclusively in "T". In July a Compromise and Release was entered into, see page 135 "T". The discrepancies in the aforementioned evidentuary material supplied to the Social Security Administration belatedly by Liberty Mutual Insurance differs substantially with the copies contained in "AAC", secured by the Appellant from the Workmen's Compensation Appeal Board, Long Beach, California. These discrepancies which taint the evidence that the Secretary and the lower Courts wholeheartedly embraced in rendering their unfavorable decisions are fully covered in "AAC" and "AB". Workmen's Compensation case was closed August 1968.

ORIGIN OF WORKMEN'S COMPENSATION MONIES

The monies in question were paid by a private insurance carrier.

FACTS SURROUNDING THE SOCIAL SECURITY CASE

In January 1969, Mr. Kananen applied for Social Security disability benefits. He was promptly denied. In 1973, Mr. Kananen was forced by a Veteran's Administration Counselor, to again apply for Social Security disability benefits, and welfare benefits, over his strenuous objections. Social Security treated the 1973 application as a re-application of the January 1969 application. In January 1974, a hearing was held in Bangor, Maine, under an Administrative Law Judge. He rendered his decision February 1974, see page 100 & 101 in "T".

The Administrative Law Judge found that Mr. Kananen was eligible for Social Security Disability benefits due to a mental condition. This decision was reaffirmed in January 1976, by Administrative Law Judge Devlin, see page 7 through 17 inclusively in "T". However, in reaching his unfavorable decision as to the imposition of the offset provision, the Administrative Law Judge disregarded Mr. Kananen's arguments of tainted evidence see page 139 through 141, inclusively in "T", also 145 through 151 in "T".

Authority to pursue in District Court:

42 U.S.C. 405 (g) Sect. 422.210 of the S.S.A. and Regulation #20 (C.F.R. 422.210)

Authority to pursue in the Eighth Circuit Court of Appeals:

28 U.S.C. 1291

REASONS FOR ALLOWANCE OF THE WRIT

There have been many cases cited by both appellant and appellee in support of their contentions in this case. However, in the question of two separate and distinct disabling injuries, neither the appellant nor the appellee has been able to ascertain existence of a case previous to the instant case in the Federal Judicial System. However, in Belcher vs. Richardson (404 U.S. 78, 92 S CT. 254 L Ed. 231) in a dissenting opinion Justice Douglas states on page 86 (4) private insurance benefits cannot be off-set. In the instant case the appellee is receiving Title II benefits for mental condition that he had not previously been compensated for. However, he received Workmen's Compensation benefits for spinal injuries that were not compensable under Title II of the Social Security Act as witnessed by the prompt denial of benefits in 1969 by the Social Security Administration.

CONCLUSION

For the foregoing reasons the lower Court judgement should either be summarily reversed or a Writ of Certiorari should be granted.

Respectfully submitted

R. A. Kananen
Attorney pro-se

Appendix A

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

RICHARD A. KANANEN
Plaintiff
- vs -
DAVID MATTHEWS, SECRETARY OF HEALTH, EDUCATION & WELFARE,
Defendant

Civil No. 3-76-213 Criminal

You are hereby notified that in the above entitled case on the 21st day of December, 1976, filed and entered Order Granting Defendant's Motion For Summary Judgment (Devitt-J 12-21-76) that the decision of the Administrative Law Judge is affirmed.

HARRY A. SIEBEN, Clerk

BY Bernadine L. Brown
Deputy Clerk

TO:
Richard A. Kananen
Rte. 2
Browerville, Minnesota 56438

Robert G. Renner, U.S. Attorney
Meil I. Dickstein, A.U.S.D.A.
596 U.S. Court House
110 So. 4th St.
Minneapolis, Minnesota 55401

Appendix B

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 77-1118

Richard A. Kananen,
Appellant,

v.

David Matthews, Secretary of Health, Education, and Welfare,
Appellee.

Appeal from the United States District Court for the District of Minnesota.

Submitted: May 20, 1977

Filed: May 25, 1977

Before LAY, BRIGHT, and STEPHENSON, Circuit Judges.

PER CURIAM.

Richard A. Kananen brought this action under 42 U.S.C. S 405 (g) to review a final decision of the Secretary of Health, Education and Welfare reducing the amount of his disability insurance benefits through the application of the statutory workmen's compensation offset, 42 U.S.C. S 424a. The district court found that the reduction was proper and entered summary judgment for the Secretary. We affirm.

Kananen was awarded workmen's compensation for a period beginning October 28, 1967, due to a disability caused by back injuries sustained in 1966 and 1967. In 1974, Kananen was awarded disability insurance benefits under SS 216(i) and 223 of the Social Security Act, 42 U.S.C. SS 416(i) and 423, for a period of disability commencing April 2, 1968. The cause of the disability was mental illness. However, Kananen was notified that pursuant to S 224 of the Social Security Act, 42 U.S.C. S 424a, his disability benefits for the period of time he was also receiving workmen's compensation benefits would be withheld.

Kananen requested a hearing on that determination. At the hearing, held on October 15, 1975, the Department of Health, Education and Welfare introduced evidence that on June 28, 1968, the Workmen's Compensation Appeals Board of the State of California awarded Kananen temporary disability indemnity of $61.75 per week beginning October 28, 1967 through May 23, 1968, and thereafter for the duration of the temporary disability. It also awarded payment for such further medical care and treatment as Kananen required as a result of his back injuries. Pursuant to this award, Kananen received $61.75 per week for the period from October 28, 1967 to July 26, 1968, an amount equal to $2,408.25, and $1,445.20 for medical expenses. On or about July 30, 1968, he entered into a settlement with the compensation insurance carrier, Liberty Mutual Insurance Company, for $15,000. Of the $15,000 settlement, $1,000 was paid to his attorney and the remainder was paid to him. Upon inquiry by the administrative law judge, Liberty Mutual Insurance Company represented that, although the details of the settlement were not made a matter of record, 29.4 percent, or $4,116, of the $14,000 paid to Kananen represented settlement of its liability for future medical expenses; the balance of $9,884 represented settlement of its liability for weekly compensation at the rate of $61.75 for 26 weeks and $52.50 for 157.6857 weeks for the period beginning July 27, 1968.

Kananen contested Liberty Mutual's representations. He stated that he received only $1,358.50 in weekly indemnity payments prior to the settlement, rather than $2,408.25. He further alleged that the lump sum settlement was not a substitute for periodic payments, and therefore his social security benefits should not be offset against that amount. Finally, he contended that S 424a only provides for an offset where the workmen's compensation payments are made for the same disability as the Social Security benefits.

The administrative law judge found that:

> 1) $9,884 of the $14,000 lump sum payment was a substitute for future periodic payments and an offset was therefore proper under the provisions of S 424a(b);1
>
> 2) Kananen's contenton that he did not receive $1,175 of the $2,408.25 allegedly paid by Liberty Mutual for the period from October 28, 1967 to July 26, 1968, even if true, was irrelevant to his claim for Social Security benefits because the offset in question, imposed beginning February 1969, was not imposed against those payments; and
>
> 3) Section 424a does not require that the workmen's compensation and disability insurance benefits be based on the same impairment in order for the offset to apply.

Presumably in determining the number of months to apply the offset, the Secretary concluded that the $9,884 payment represented 183.6857 weeks of disability payments, as Liberty Mutual Insurance Company represented to the administrative law judge.

The district court found that substantial evidence existed in the record to support the findings of the administrative law judge and that the applicable law had been accurately interpreted. We agree.

Kananen's major contention on appeal is that the offset provision does not apply where disability benefits under the Social Security Act and workmen's compensation benefits are paid for different disabilities. We find no merit to this contention.

Section 424a provides in pertinent part as follows:

> (a) If for any month prior to the month in which an individual attains the age of 62 -
> (1) such individual is entitled to benefits under section 423 of this title, and
>
> (2) such individual is entitled for such month, under a workmen's compensation law or plan of the United States or a State, to periodic benefits for a total or partial disability (whether or not permanent), and the Secretary has, in a prior month, received notice of such entitlement for such month,
>
> the total of his benefits under section 423 of this title for such month * * * based on his wages and self-employment income shall be reduced * * *.

In construing S 424a, we are governed by the principles we set forth in *United States v. Kelly*, 519 F.2d 251, 256 (8th Cir. 1975):

> In the early decision of United States v. Standard Brewery, 251 U.S. 210, 40 S.Ct. 139, 64 L.Ed. 229 (1920), the Court observed:
>
> > Nothing is better settled than that in the construction of a law its meaning must first be sought in the language employed. If that be plain, it is the duty of the courts to enforce the law as written, provided it be within the constitutional authority of the legislative body which passed it.

Id. at 217, 40 S.Ct. at 140.

If that wording is plain and simple and straightforward, the words employed must be accorded their normal meaning. As the Court said in *Helvering v. Hammel*, 311 U.S. 504, 61 S.Ct. 368, 85 L.Ed. 303 (1941):

> True, courts in the interpretation of a statute have some scope for adopting a restricted rather than a literal or usual meaning of its words where acceptance of that meaning would lead to absurd results, *United States v. Katz*, 271 U.S. 354, 362 (46 S.Ct. 513, 516, 70 L.Ed. 986), or would thwart the obvious purpose of the statute, *Haggar Co.. v. Helvering*, 308 U.S. 389 (60 S.Ct. 337, 84 L.Ed. 340). *But courts are not free to reject that meaning where no such consequences follow and where, as here, it appears to be consonant with the purposes of the Act as declared by Congress and plainly disclosed by its structure.*

Id. at 510-511, 61 S.Ct. at 371. (Emphasis added).

In applying these principles, we conclude that there is no basis either in the wording of S 424a or in that section's legislative history to support the interpretation Kananen urges. Section 424a provides that where a person is entitled to benefits under 42 U.S.C. S 423 and that person is entitled to workmen's compensation benefits for a disability, an offset shall be applied. No portion of S 424a limits its application to payments for a disability caused by the same physical or mental condition. Instead S 424a refers back to S 423, which defines disability as the inability to engage in substantial gainful activity. 42 U.S.C. S 423(d) (1). Under this definition, it is the end result, not the cause, which governs. *Combs v. Gardner*, 382 F.2d 949 (6th Cir. 1967). Thus, whenever a person is unable to en-

gage in substantial gainful activity, for whatever reason, and is therefore entitled to benefits under S 423 of the act, and he is also entitled to workmen's compensation, the offset provision of S 424a is applicable. Furthermore, it is clear from the legislative history that the purpose of S 424a is to prevent the payment of excessive combined benefits. *See* S.Rep. 404, 89th Cong., 1st Sess., 1965 U.S. Code Cong. & Admin. News 1943 at 2040. The result Kananen urges would be contrary to this intent.

Kananen also contends that the Secretary erred in determining pursuant to S 424a(b)2 that the lump sum payment of workmen's compensation benefits was a commutation of, or substitute for, periodic payments and that the offset was therefore applicable. In support of his contention, Kananen alleges that, contrary to Liberty Mutual's representations, he received no weekly temporary indemnity payments after March 1968, and was unaware that such payments were legally due him. We have reviewed the record and agree with the district court that there is substantial evidence to support the Secretary's determination. The record leaves no doubt that the lump sum payment was indeed a commutation of, or _____

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42 U.S.C. S 424a(b) provides:

> (b) If any periodic benefit under a workmen's compensation law or plan is payable on other than a monthly basis (excluding a benefit payable as a lump sum except to the extent that it is a commutation of, or a substitute for, periodic payments), the reduction under substitute for, periodic payments.

Finally, Kananen contends that the offset provisions of S 424a constitute a denial of due process and equal protection. Similar arguments have been consistently found to be without merit. *See Richardson v. Belcher,* 404 U.S. 78 (1971); *Smith v. Ethyl Corp.,* 417 F. Supp. 669 (S.D. Tex. 1976); *Smith v. Weinberger,* 381 F. Supp. 1307 (E.D. Mich. 1974), *aff'd,* 513 F.2d 632 (6th Cir. 1975); *Bartley v. Finch,* 311 F. Supp. 876 (E.D. Ky. 1970) (three-judge court), *aff'd,* 404 U.S. 980 (1971).

Judgment affirmed.

A true copy.

Attest: **CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.**

n.2 continued:

> **this section shall be made at such time or times and in such amounts as the Secretary finds will approximate as nearly as practicable the reduction prescribed by subsection (a) of this section.**

In his brief on appeal, Kananen argues that the district court erred in granting summary judgment because of the existence of a genuine issue of material fact, *i.e.*, whether Mutual Liberty paid him periodic payments for the period from October 28, 1967 to July 26, 1968, as it claimed, or whether such periodic payments stopped after March 1968, as he claims. The factual dispute is not material to this controversy. Even if true, it could not affect the validity of the Secretary's determination that the lump sum payment was a commutation of, or substitute for, periodic payments. Furthermore, it did not affect the amount of the offset, since the offset was imposed only against payments considered to be owed Kananen under the terms of the settlement in 1969.

Therefore, the summary judgment was properly granted. Kananen's remedy for the alleged nonpayment is against the insurance company.

Supreme Court, U. S.
FILED
OCT 18 1977
MICHAEL RODAK, JR., CLERK

No. 77-300

In the Supreme Court of the United States

OCTOBER TERM, 1977

RICHARD KANANEN, PETITIONER

v.

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1977

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RICHARD KANANEN, PETITIONER

v.

JOSEPH A. CALIFANO, JR., SECRETARY
OF HEALTH, EDUCATION AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner seeks review of a decision affirming the reduction of his disability insurance benefits, pursuant to 42 U.S.C. (and Supp. V) 424a, because of his receipt of workmen's compensation benefits.

Petitioner was awarded workmen's compensation benefits for a disability caused by back injuries for a period beginning October 28, 1967. After he had received weekly payments for a period of about nine months,[1] on or about

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[1]Petitioner received $61.75 per week for the period from October 28, 1967, to July 26, 1968, in a total amount of $2,408.25, as well as $1,445.20 for medical expenses. 555 F. 2d at 669. (We refer to the official report of the decision below because the appendix to the petition is not paginated and is incomplete.)

July 30, 1968, petitioner entered into a settlement with the compensation insurance carrier in the amount of $15,000. Of this amount, $9,884 represented settlement for weekly compensation. 555 F. 2d at 669.

In 1974, petitioner also was awarded disability insurance benefits pursuant to 42 U.S.C. (and Supp. V) 416(i) and 423 for disability due to mental illness. Pursuant to 42 U.S.C. (and Supp. V) 424a, petitioner's disability benefits were reduced because of his receipt of workmen's compensation benefits. 555 F. 2d at 668-669. Petitioner challenged the reduction in benefits on the ground that the statute does not apply to workmen's compensation benefits awarded for a different disability from that for which disability benefits were paid, and he also contested the amount of the offset. 555 F. 2d at 669.

After exhausting his administrative remedies, petitioner sought review in the district court, which affirmed the reduction of his benefits (Pet. App. A). The court of appeals affirmed (Pet. App. B).

The court of appeals' decision is correct and does not warrant review by this Court.

1. 42 U.S.C. (and Supp. V) 424a provides in relevant part that an individual who is entitled to both disability insurance benefits and workmen's compensation benefits in any particular month shall have his disability insurance benefits reduced pursuant to a statutorily prescribed formula.[2] The Secretary determined, and both

[2]The reduction is in an amount equal to the workmen's compensation benefits received, unless 80 percent of the individual's average current earnings is greater than the disability insurance benefits to which the individual is entitled before reduction. In the latter situation, disability insurance benefits are to be reduced by the amount by which the sum of disability insurance benefits plus workmen's compensation benefits exceeds 80 percent of average current earnings. 42 U.S.C. 424a(a)(3)-(5).

courts below held, that the provisions of 42 U.S.C. (and Supp. V) 424a apply to petitioner's claim for disability insurance benefits, notwithstanding the fact that he received his workmen's compensation benefits as a result of his back injuries and the cause of his disability for disability insurance benefits was mental illness. This interpretation follows the unambiguous language of the statute, which provides for an offset in the case of any receipt of periodic benefits for total or partial disability under state workmen's compensation law, without regard to the event triggering entitlement under state law. Cf. *Grant* v. *Weinberger*, 482 F. 2d 1290 (C.A. 6).

Moreover, the legislative history supports this interpretation. The offset provided by 42 U.S.C. (and Supp. V) 424a was enacted to correct a problem created by the overlap between workmen's compensation programs and federal disability insurance programs, which in some cases resulted in the payment of total benefits that exceeded an employee's pre-disability take-home pay, thereby reducing his incentive to return to work and impeding state rehabilitative programs. *Richardson* v. *Belcher*, 404 U.S. 78, 82-83. In *Richardson* this Court therefore held that there is a rational basis for the classification created by the statute. Contrary to petitioner's contention (Pet. 4), the application of the offset provision to his case is not arbitrary, since Congress' concerns are equally applicable whether the overlap between state and federal benefits is triggered by the same disability or not.

2. Petitioner also contends (Pet. 3) that the courts below and the Secretary erred in "completely disregarding" his evidence regarding computation of the offset and in crediting evidence he had shown to be "tainted." The district court found substantial evidence in the record

to support the Secretary's findings, however, and the court of appeals affirmed.[3] There is no occasion for further review of these factual findings.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

OCTOBER 1977.

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[3]Petitioner asserted in the court of appeals that he did not receive part of the weekly workmen's compensation benefits due from the compensation insurance carrier. 555 F. 2d at 671 n. 3. The court of appeals held that petitioner's factual assertion was irrelevant to the disposition of the case, since the offset provision was applied with respect only to the lump-sum settlement payment received by petitioner and not to the previously received weekly periodic payments. *Ibid.* Petitioner also contended that the lump-sum payment was not a substitute for periodic payments. The court of appeals found no support for this contention in the record. 555 F. 2d at 670-671.

DOJ-1977-10